(2019) 07 GAU CK 0064

In the Gauhati High Court

Case No : Motor Accident Appeal No. 370 Of 2016

Raj Mohan Hazarika And 3 Ors — APPELLANT

Vs

Purna Kanta Singha And 2 Ors — RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 140
Code Of Civil Procedure, 1908 — Section 2(11)

Citation : (2019) 07 GAU CK 0064

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : S K Jain, P Hazarika

Final Decision : Dismissed

Judgement

1. Heard Mr. S.K. Jain, the learned counsel for the appellants as well as Mr. P. Hazarika, the learned counsel for the respondent No. 3. None appears for the other respondents despite notice.

2. This is an appeal against the Judgment dated 31.03.2015 passed by the learned Member, Motor Accident Claims Tribunal No. III, Kamrup (M), Guwahati in MAC Case No. 1605/2012 seeking enhancement of the award.

3. Brief facts of the case is that on 25.04.2012, the mother of the appellant Smt. Tilemai @ Tilomai Hazarika was returning towards her residence on foot at Uzan Bazar, Guwahati. Suddenly, vehicle bearing Registration No. AS-01/AC-7112 (Auto Pick up Van), a water carrying tanker knocked her down at Lamb Road. As a result, she sustained grievous injuries on her head, legs and other parts of her body. She was taken to Guwahati Neurological Research Centre (GNRC), Guwahati and thereafter, she was admitted to Down Toawn Hospital for further specialized treaetment. However, she succumbed to her injuries on 14.05.2012. As such, the claimants who are sons and daughters of the deceased filed the claim application before the Tribunal. During the claim proceedings before the

Tribunal, the claimant examined claimant No. 1 i.e. son of the deceased as the lone claimants' witness while the opposite parties including the Insurance Company did not examine any witness. They only cross examined the claimant's witness. Consequently, the Tribunal vide Judgment dated 31.03.2015 disposed of the claim by awarding a sum of Rs. 3,33,000/- as compensation to the claimant alongwith interest @ 6% per annum from the date of filing of the claim till final realization. The said amount was in addition to Rs. 50,000/- already paid to the claimant toward no fault liability under Section 140 of the Motor Vehicles Act, 1988 (MV Act).

4. Mr. S.K. Jain, the learned counsel referring to the grounds taken in the appeal submits that the Tribunal committed gross error in law and on facts by holding that there was no loss of dependency on the claimant while declaring them as legal representatives. He submits that it is the devolution of the estate of the deceased which is important and not the actual dependency of the claimant. He submits that the Tribunal did not take any realistic and pragmatic view for assessing the quantum of compensation inasmuch as even if there was no dependency, there is a loss of estate and the person who is the legal representative but not a dependent can be the beneficiary of the estate. The deceased was having her own income of Rs. 5000/- per month at the relevant time of the accident and this fact has neither been shaken nor falsified by the opposite party before the Tribunal. Therefore, the Tribunal ought to have awarded compensation to the claimant under the head 'loss of income' while assessing the compensation. He further submits that the Tribunal committed an error in computing the compensation towards medical expenses inasmuch as the award is only a sum of Rs. 2,08,000/- towards medical expenses while the actual amount spent by the appellants was Rs. 2,21,382/- supported by vouchers.

5. Mr. Jain further submits that no amount of compensation has been awarded toward the head, such as 'loss of estate', 'mental agony', 'shock', 'pain and suffering' etc. Besides, the rate of interest @ 6% per annum as given by the Tribunal is on the lower side and the appropriate rate of interest @ 12% p.a. should have been awarded. Under the facts and circumstances, he submits that the amount awarded by the Tribunal may be suitably enhanced by this Court.

The learned counsel in support of his submission relies upon the decision of the Apex Court in Custodian of Branches BANCO National Ultramarino Vs. Nalini Bai Naique, reported in 1989 Suppl (2) SCC 275 as well as Gujarat SRTC Vs. Ramanbhai Prabhat reported in (1987) 3 SCC 234.

6. Mr. P. Hazarika, the learned counsel for the respondent No. 3, on the other hand, submits that from the evidence led by the appellants themselves, it is clear that they are not dependent upon the deceased and that the appellant No. 1 has his own income from business while the appellant Nos. 2, 3 and 4 are married and not dependent upon the deceased. Under the circumstance, the appellants will only be entitled to the no fault liability quantified under Section 140 of the MV Act and also an amount of Rs. 15,000/- each under the conventional heads

i.e. 'funeral expenses' and 'loss of estate'. Therefore, the appellants have been given compensation more than what is due to them under the established law. He therefore submits that there is no merit in the appeal and the same may be dismissed.

In support of his submission, the learned counsel relied upon the decision of the Apex Court in Manjuri Bera Vs. Oriental Insurance Company Ltd and Another reported in (2007) 10 SCC 643.

7. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record as well as the record of the Tribunal.

8. The facts involved in the case are broadly not disputed by the parties. However, the appellants have sought enhancement of the amount awarded by the Tribunal by maintaining that they are entitled to compensation towards 'loss of estate' although they may not be dependent upon the deceased. Further, the Tribunal wrongly awarded only a sum of Rs. 2,08,000/- towards medical expenses while the actual expenditure was Rs. 2,21,382/-. From a perusal of the evidence of the appellant No. 1, it may be seen that the deceased was a housewife and she was earning a sum of Rs. 5000/- per month doing petty business. The appellants spent a sum of Rs. 3,00,000/- approximately for the medical treatment of the deceased while they incurred a sum of Rs. 75,000/- towards funeral rites of their mother. As such, a claim of Rs. 8,00,000/- was found to be justified and claimed by them. In the cross examination, the same witness deposed that he is not dependent upon the deceased and he was doing his own business since the year 2001 and having a monthly income of about Rs. 8000/-.Besides the evidence of appellant No. 1, the appellants did not examine any other witness. Therefore, from the evidence led, the admitted position is that the appellants as claimants were not dependent upon the deceased.

9. The Apex Court in the case of Nalini Bai Naique(Supra) held that the definition of 'legal representative' under Section 2 (11) of the Code of Civil Procedure is not confined to legal heirs only. It stipulates that a person who may or may not be a legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. Therefore, it includes heirs as well as persons who represent the estate even without title either as executors or administrators in possession of estate of the deceased. All such persons will be covered under the expression 'legal representative'.

10. In the case of Ramanbhai Prabhat(Supra), the Apex Court also held that a 'legal representative' is one who suffers on account of the death of the person due to a motor vehicle accident and need not necessary be a wife, husband, parent or child. However, the issue involved in the present case is as to whether the appellants who are undisputedly legal representatives of the deceased will be entitled to compensation even if they are not dependant on the deceased. The evidence on record clearly reveals that they are not dependent upon the

deceased. The Apex Court in the case of Manjuri Bera(Supra) held that where a legal representative who is not dependent upon a deceased files an application for compensation, the quantum of compensation cannot be less than the liability under Section 140 of the MV Act. Therefore, even if there is no loss of dependency, the claimant if he or she is a legal representative will be entitled to compensation, the quantum of which shall not be less than the liability flowing from Section 140 of the MV Act. In the present case, it may be seen that an amount of Rs. 50,000/- was already deposited by the Insurance Company towards no fault liability under Section 140 of the MV Act, the same was withdrawn by the appellants. The Tribunal however went on to dispose of the claim by awarding a sum of Rs. 3,33,000/- as compensation in addition to the 50% already given to the claimant.

11. Having regard to the law laid down by the Apex Court in Manjuri Bera (Supra), the Tribunal could not have awarded compensation to the appellants beyond the no fault liability under Section 140 of the MV Act and also the medical expenses actually incurred by the appellants supported by vouchers. This Court in MAC Appeal No. 335/2017 (Oriental Insurance Company Ltd Vs. Sri Gullu Worrang and 2 Ors), which was disposed of on 29.07.2019, where a similar question came up for consideration, followed the decision of the Apex Court rendered in Manjuri Bera(Supra). Further, apart from the no fault liability, this Court held that in view of the Constitution Bench decision in The National Insurance Company Vs. Pranay Sethi and Ors, reported in 2017 16 SCC 680, the claimants in that case would be entitled to a sum of Rs. 15,000/- each under the conventional heads i.e. 'funeral expenses' and 'loss of estate'. Similar would be the entitlement of the appellants in the present case as well. Further, it is seen that although a sum of Rs. 2,21,382/-was spent towards medical expenses upon the deceased, the Tribunal awarded only a sum of Rs. 2,08,000/-. As such, there is a difference of a sum of Rs. 13,382/-However, upon noticing that the Tribunal awarded a sum of Rs. 1,00,000/- towards loss of love and affection and Rs. 25,000/- as funeral expenses, I do not find it necessary to make further adjustments on the awarded amount. Moreover, as the Insurance Company has not challenged the impugned Judgment by filing an appeal or a cross appeal, I am not inclined to make any changes in the Judgment of the Tribunal.

12. In the result, the appeal is found without any merit and the same is dismissed. Office to send back the LCR immediately.